



## **DEPARTMENT OF AGRICULTURE**

### **Farm Service Agency**

### **Emergency Livestock Relief Program (ELRP) and Emergency Relief Program (ERP) Clarification**

**[Docket ID FSA–2022–0008]**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of funds availability; clarification and revision.

**SUMMARY:** The Farm Service Agency (FSA) is amending the definition of “income derived from farming, ranching, and forestry operations” for ELRP and ERP and clarifying policy around the filing of certifications of average adjusted gross farm income. FSA is clarifying the ERP Phase 1 policy related to producers who received both a crop insurance indemnity and a Noninsured Crop Disaster Assistance Program (NAP) payment. FSA is also amending ERP Phase 1 to include eligibility for Federal Crop Insurance policies with an intended use for nursery.

**FOR FURTHER INFORMATION CONTACT:** Tona Huggins; telephone: (202) 720–6825; email: [tona.huggins@usda.gov](mailto:tona.huggins@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

### **SUPPLEMENTARY INFORMATION:**

#### **Revision and Clarification**

FSA announced ELRP in a Notification of Funding Availability (NOFA) on April 4, 2022 (87 FR 19465-19470), and ERP in a NOFA on May 18, 2022 (87 FR 30164-30172). Implementation of ELRP Phase 1 began on April 4, 2022. Implementation of ERP Phase 1 began on May 18, 2022. In those documents, FSA provided the eligibility requirements, application process, and payment calculations for Phase 1 of each program.

In this document, FSA is making clarifications and revising policy for those programs, as described below.

### **Clarification to Income Derived from Farming, Ranching, and Forestry Operations**

The payment limits under both ELRP and ERP are higher for producers whose average adjusted gross farm income is at least 75 percent of their average adjusted gross income (AGI) based on the 3 taxable years preceding the most immediately preceding complete tax year. Under the ERP and ELRP NOFAs income derived from farming, ranching, and forestry operations includes any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator. The Deputy Administrator considered the definition of “income derived from farming, ranching, and forestry operations” used in prior disaster programs and determined the need to clarify that the sale of equipment to conduct farm, ranch, or forestry operations and the provision of production inputs and services to farmers, ranchers, foresters and farm operations are considered eligible sources of income derived from farming, ranching, and forestry operations under certain conditions. Production inputs are materials to conduct farming operations, such as seeds, chemicals, and fencing supplies. Production services are services provided to support a farming operation, such as custom farming, custom feeding, and custom fencing. In this document, FSA is providing clarification regarding how the sale of equipment to conduct farm, ranch or forestry operations and the provision of production inputs and services will be considered for the purpose of determining whether at least 75 percent of the producer’s average AGI was from income derived from farming, ranching, and forestry operations. This is only to the extent a producer’s income derived from these sources is not already included under items 1 through 12 of the definition of income derived from farming, ranching, and forestry operations.

The sale of equipment used to conduct farm, ranch, or forestry operations and the provision of production inputs and services to farmers, ranchers, foresters, and farm

operations will only be taken into account in an applicant's average adjusted gross farm income if the average adjusted gross farm income is at least 66.66 percent of the applicant's average AGI based on items 1 through 12 of the definition of income derived from farming, ranching, and forestry operations. For clarity, the full definition of "average adjusted gross farm income" is provided below. This definition is applicable to both ELRP and ERP. It replaces the definition provided in the ERP NOFA and will also apply to the ELRP NOFA.

*Average adjusted gross farm income* means the average of the person or legal entity's adjusted gross income derived from farming, ranching, or forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year.

(a) If the resulting average adjusted gross farm income derived from items 1 through 12 of the definition of income derived from farming, ranching and forestry operations is at least 66.66 percent of the average adjusted gross income of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

- (1) The sale of equipment to conduct farm, ranch, or forestry operations; and
- (2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(b) The relevant tax years are:

- (1) For the 2020 program year, 2016, 2017, and 2018;
- (2) For the 2021 program year, 2017, 2018, and 2019; and
- (3) For the 2022 program year, 2018, 2019, and 2020.

In response to inquiries made by CPAs and attorneys, FSA is providing additional clarity related to the certifications of average adjusted gross farm income. For legal entities not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross

farm income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by FSA. A new legal entity will have its adjusted gross farm income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership interest and land with the preceding person or legal entity. When there is such commonality, income of the previous person or legal entity will be averaged with that of the new legal entity for the base period. For a person filing a joint tax return, the certification of average adjusted farm income will be reported as if the person had filed a separate federal tax return and the calculation is consistent with the information supporting the filed joint return.

ELRP and ERP applicants filing certifications of average adjusted gross farm income are subject to an FSA audit of information submitted for the purpose of increasing the program’s payment limitation. As a part of this audit, FSA may request income tax returns, and if requested, must be supplied by all related persons and legal entities. In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of 2 years after the end of the calendar year corresponding to the year for which payments or benefits are requested. Failure to provide necessary and accurate information to verify compliance, or failure to comply with these requirements will result in ineligibility for ELRP and ERP benefits. This is consistent with the current requirements for participants in both ERP Phase 1 and ELRP to retain documentation in support of their application for 3 years after the date of approval.

### **ERP Phase 1 Payments – Crop Insurance Policies and NAP**

ERP Phase 1 covers certain losses for which a producer received a crop insurance indemnity or Noninsured Crop Disaster Assistance Program (NAP) payment. In some

situations, a producer may have received both a NAP payment for a crop loss and an indemnity under a crop insurance policy that was included in ERP Phase 1 to address the same loss. Examples of these policies include Rainfall Index plans for Annual Forage; Pasture, Rangeland, and Forage; or Apiculture. In those situations, the producer's ERP Phase 1 payment will be calculated based only on the data associated with their indemnity under the crop insurance policy; for those producers no ERP Phase 1 payment will be calculated based on the data associated with their NAP payment. This policy is necessary to avoid compensating producers twice for the same loss under ERP Phase 1.

### **ERP Phase 1 Payments – Nursery**

The original NOFA for ERP Phase 1 excluded payments for nursery stock covered by a Federal Crop Insurance policy. After further consideration, FSA has determined that nursery stock covered by a Federal Crop Insurance policy suffered qualifying losses similar to other crops covered under ERP Phase 1 and to be consistent with prior disaster programs administered by FSA, we are revising the policy to include eligible nursery losses during the 2020, 2021, or 2022 crop years for which a producer had a Federal Crop Insurance policy that provided coverage for eligible losses related to the qualifying disaster events and received an indemnity for a crop and unit.

### **Paperwork Reduction Act**

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501– 3520), this NOFA does not change the approved information collection under OMB control numbers 0560–0307 and 0560–0309, respectively.

### **Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, as found in the Assistance Listing,<sup>1</sup> to which this document applies are 10.148 – Emergency Livestock Relief Program, and 10.964 – Emergency Relief Program.

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<sup>1</sup> See <https://sam.gov/content/assistance-listings>.

## **USDA Non-Discrimination Policy**

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Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

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of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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